

IN THE  
**SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1978

NO. 78-993

EDDIE THOMPSON, JR.,  
Plaintiff-Petitioner,

v.

AMERICAN URBAN PEOPLES ECONOMIC  
DEVELOPMENT CORP.,  
PEOPLES LIBERTY BANK AND TRUST CO.,  
MER GRAYSON, SR.,  
MER GRAYSON, JR.,  
GEORGE GOVER,  
RICHARD S. NELSON,  
Defendants-Respondents.

**PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

EDDIE THOMPSON, JR., Pro Se  
736 Highland Avenue  
Covington, Kentucky 41011  
1-606/491-6278

I hereby certify that 3 copies of the foregoing petition  
have been served by the United States mail, upon:

(1) Mr. Richard C. Meyer, P.O. Box 972, Covington  
Kentucky 41012

(2) Mr. John Elfers, 107 Park Place, Covington, Ken-  
tucky 41011

(3) Mr. Richard Nelson, 11 W. 6th Street, Covington,  
Kentucky 41011

(4) Mr. Rodney Bryson, First National Bank Building,  
Covington, Kentucky on this .... day of December, 1978.

.....  
Eddie Thompson, Jr., Pro Se

Supreme Court, U.S.  
**FILED**

DEC 19 1978

WILLIAM J. DAK, JR., CLERK

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AMERICAN URBAN PEOPLES ECONOMIC  
DEVELOPMENT CORP.,  
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MER GRAYSON, SR.,  
MER GRAYSON, JR.,  
GEORGE GOVER,  
RICHARD S. NELSON,  
Defendants-Respondents.

PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

Petitioner, Eddie Thompson, Jr., respectfully prays that a Writ of Certiorari issue to review the Judgment of the United States Court of Appeals for the Sixth Circuit entered in the above styled case on October 10, 1978 (App. p. 23a); Petition for Rehearing denied on November 14, 1978 (App. p. 25a); Mandate issued November 28, 1978 (App. p. 23a).

### OPINION BELOW

The opinion of the United States District Court for the Eastern District of Kentucky — Covington was entered on November 17, 1978. Motion to Amend Its Order and/or Certify Questions of Law overruled January 31, 1978.

### JURISDICTION

The jurisdiction of this court is invoked pursuant to 28 U.S.C. 1254 (1). The order appealed from being entered on October 10, 1978 (App. p. 23a), rehearing denied November 14, 1978.

### QUESTIONS PRESENTED

- (1) When no responsive pleadings have been filed, does the filing of an Amended Complaint effectuate the Amended Complaint.
- (2) Where appellees have neglected to file a Reply Brief as required by Statute (Rule 31 of Federal Rules of Appellate), is it an abuse of discretion for the Court of Appeals to entertain a Motion to Dismiss, or in the alternate, could the Court of Appeals dismiss pursuant to its own Motion; when the record will not support its action, without abusing its discretion.
- (3) Where appellant is entitled to an appeal as a matter of right, is it a denial of due process of law when the Court of Appeals refuses to grant that right.
- (4) In a derivative suit, is the dismissal of the corporate defendant a de facto dismissal of the derivative suit.

- (5) Is an order dismissing a complaint, without giving the plaintiff an opportunity to be heard, a denial of due process of law.

### STATEMENT

The instant case, filed July 27, 1977, involves an alleged conspiracy to foreclose on real property owned by American Urban Peoples Economic Development Corporation, wherein petitioner Thompson owned controlling interest of the stock. It is further alleged that these illegal acts were done because the corporate stockholders were Negroes and because Thompson, a Negro, had allegedly contested a Primary election (App. p. 4a).

Petitioner Thompson had inadvertently called the defendant Corporation a plaintiff. However, in a stockholder derivative suit the Corporation must be a defendant. (Rules of Civil Procedure, Rule 23.1) Defendants did not answer the complaint. Recognizing the error, Thompson filed an Amended Complaint on September 23, 1977 (App. p. 4a).

The District Court dismissed the corporate defendant or in the alternative, refused to accept plaintiff's Amended Complaint realigning the Corporation as a defendant (App. p. 16a).

Then the District Court refused to Alter or Amend Judgment and/or to Certify Question of Law.

Plaintiff filed a timely appeal in the Court of Appeals. Defendants-respondents refused to file a brief as required by Rule 31 of the Rules of Appellate Procedure. The clerk of the Court of Appeals informed the appellees of their neglect (App. p. 22a). Appellees still refused to file a brief, but filed an untimely Motion to Dismiss, claiming

the Order appealed from was final, but that appellant had failed to file a timely appeal; and that plaintiff-petitioner's Motion to Amend Order and/or to Certify Question of Law were not appealable issues (See App. p. 23a).

The Court of Appeals dismissed appeal pursuant to appellees Motion and Rule 9 (b) 1 Rules of the Sixth Circuit (App. p. 23a). Petition for Rehearing was denied on November 14, 1978 (App. p. 25a). Subsequently, a Mandate issued on November 28, 1978.

The net effects of the Court of Appeals' refusal to take the case and decide it is a denial of due process and an abuse of discretion.

#### REASONS FOR GRANTING THE WRIT

In its Order dismissing Appeal (App. p. 23a), the Court of Appeals states: ". . . It *appears* that the order entered on November 17, 1977, dismissed only one plaintiff's claims against defendants and that there was neither an express determination under Rule 54 (b) F.R.C.P., nor a certification under 28 U.S.C. 1292 (b), and therefore not a final order from which an appeal could be perfected," Citation omitted.

There is only one plaintiff in this stockholders derivative suit (App. p. 4a).

Defendants failed to state any statement of facts in the Counter-statement of facts in a Reply brief as required by law.

The assumed facts by the Court of Appeals is an abuse of discretion.

Plaintiff-petitioner had filed an Amended Complaint in the District Court (App. p. 4a).

"Absent any indications that responsive pleadings had been served to the original complaint, the filing

of an Amended Complaint effectuates the Amended Complaint. *Schracht v. Javits*, 53 FRD 321.

Defendants have not filed an answer to the original Complaint.

"Discretion of trial court with respect to amending pleading must not be abused and refusal to permit an amendment must have a justifying reason." *Anderson v. American Oil Co.*, 60 F.R.D. 676.

"The grant or denial of an opportunity to amend pleading pursuant to F.R.C.P. Rule 15 (a) is within the discretion of the Federal District Court, but outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion and is merely abuse of discretion and is inconsistent with the spirit of the Federal Rules." *Foreman v. Davies*, 9 LEd 2d 222.

There is nothing in the record to indicate that the District Court or the Court of Appeals used any discretion as to the Amended Complaint.

"The Federal Rule rejects the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accepts the principal that the purpose of pleading is to facilitate a proper decision on the merits." *Conley v. Gibson*, 2 LEd 2d 80; *Foreman v. Davies*, 9 LEd 2d 222.

"The Appellate Court has been vigilant in reversing trial courts that have failed to effect the policy of liberal amendments provided by the rule." *Foreman v. Davies*, *Supra*.

When the District Court dismissed defendant American Urban Peoples Economic Development Corporation, in essence it dismissed the Stockholder's Derivative Suit.



The issue of whether a stockholder may proceed pro se in a stockholders' derivative suit has already been determined in the affirmative in the Sixth Circuit. *Willheim v. Murchison*, 206 F Supp. 733, Appeal dismissed 312 F 2d 399.

"Right to proceed pro se derives from belief that respect for human dignity is best served by respect for individual freedom of choice." *Soto v. United States*, 369 F Supp 232.

Inasmuch as one may appear in propria persona as a lawyer for himself, it is not improper for himself to present arguments in court which are common to other plaintiffs as well as himself. In this matter (petitioner's) position is no different from members of the bar who frequently present common arguments in multi-party action . . . While it might make for easier conduct of litigation and a more prompt determination of the issue, if petitioner (if he could) were to retain counsel to represent him rather than insist upon proceeding in . . . layman fashion in court appearances himself, nevertheless, his right as an individual to appear in his own action is one which cannot be denied him. *Willheim v. Murchison*, 206 F Supp 733, Appeal dismissed 312 F2d 399.

After being informed by the Court of Appeals to file a brief, and refusing to do so, it should have become obvious that appellees were not entitled to a dismissal.

The dismissal was in effect an affirmance of the District Court's decision (a denial of justice).

Without the corporate defendant there would really be nothing to decide, since the Corporation must be a defendant in a stockholder's derivative suit. F.R.C.P. Rule 23.1.

"Under 28 U.S.C. 1291 giving United States Courts of Appeals jurisdiction of appeals from all "final de-

cision" of Federal District Courts, a decision may be "final" although it is not the last order possible to be made in a case and is to be given a practical rather than a technical construction." *Gillespie v. United Steel Corp.*, 13 L Ed 2d 199.

Decree is final for purpose of appealability, when it terminates litigation between parties on merits of case and leaves nothing to be done but to enforce by execution what has been determined. 28 U.S.C.A. 1291.

Ordinarily, the grounds for dismissal for lack of appellate jurisdiction may be (1) that the judgment of the District Court was not a decision upon a "claim for relief," (2) that the decision was not a "final decision" in the sense of an ultimate disposition of an individual claim entered in the course of a multiple claims action, or (3) that the District Court abused its discretion in certifying the order." *Sears v. Mackey*, 100 LEd 1297.

The Court of Appeals claims it did not have jurisdiction, yet it decided that the corporate defendant should be dismissed, but gave no reason.

Rule 54 (b) F.R.C.P. . . . which permits the entry of a judgment upon one or more, but less than all claims in a multiple claims action is valid . . . it does not supersede any statute controlling appellate jurisdiction and recognizes the statutory requirement for an appeal to the Court of Appeals. . . . is both valid as to its negative effect, where the court refuses to make the requisite determination and direction, and as to its affirmative effect, where the court does make such determination and direction. *Sears v. Mackey*, Supra.

Because the District Court refused to alter or amend judgment and/or to certify question (App. p. 23a), it does not mean its judgment was not appealable.

Traditionally, this court has held that "the requirement of finality as a prerequisite of jurisdiction of a Court of Appeals to entertain appeals from all final decisions of a federal court are to be given a practical rather than a technical construction; the inquiry requires some evaluation of the competing considerations underlying all question of finality, that is the inconvenience and cost of piecemeal on the one hand and the danger of denying justice on the other." *Eisen v. Carlisle and Jacquelin*, 40 LEd 2d 732; *Cohen v. Beneficial Industrial Loan Corp.*, 93 LEd 1528; *Diabella v. United States*, 7 LEd 2d 614; *Gillespie v. U.S. Steel Corp.*, 13 LEd 2d 189; *Sears v. Mackey*, 100 LEd 1297.

The Court of Appeals in its decision in *Gillespie v. U.S. Steel*, *Supra* and *Willheim v. Murchison*, 312 F2d 399, conflicts with their decision in this case.

The decision in *Gillespie v. U.S. Steel* was affirmed by this Court. There is no indication that *Willheim v. Murchison* was appealed.

### CONCLUSION

The issues raised in this case are similar to the issues raised in Case No. 78-814 filed in this Court on November 17, 1978.

The Court should hear these important issues raised by granting a Writ of Certiorari.

EDDIE THOMPSON, JR., Pro Se

### APPENDIX

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
COVINGTON

CIVIL ACTION NO. 77-73

AMERICAN URBAN PEOPLE'S ECONOMIC  
DEVELOPMENT CORP., ET AL.,  
PLAINTIFFS,

vs.

PEOPLES LIBERTY BANK, ET AL.,  
DEFENDANTS.

### ORDER

(Filed August 12, 1977)

Defendants Peoples Liberty Bank and Trust Company, Merv Grayson, Sr., and Richard S. Nelson, having, on August 9, 1977, filed a motion to dismiss, and the Court being advised, it is

### ORDERED:

1. That movants be granted twenty (20) days from the date of this Order within which to serve and file a memorandum in support of their motion.

2. That all other parties be granted twenty (20) days thereafter within which to serve and file a responsive memorandum.

3. At the expiration of forty (40) days from the date of this Order the Clerk is directed to forward this record to the undersigned Judge for his consideration.

This 12 day of August, 1977.

/s/ EUGENE E. SILER, JR.,  
JUDGE

la

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
COVINGTON

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CIVIL ACTION NO. 77-73

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AMERICAN URBAN PEOPLE'S ECONOMIC  
DEVELOPMENT CORP., ET AL.,  
PLAINTIFFS,

vs.

PEOPLES LIBERTY BANK, ET AL.,  
DEFENDANTS.

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**ORDER**

(Filed September 2, 1977)

Defendant Merv Grayson, Jr., having, on August 12, 1977, filed a motion to dismiss and supporting memorandum, and defendant Gover having, on August 15, 1977, filed a motion to dismiss, and plaintiff having, on August 29, 1977, tendered an amended complaint, and the Court being advised as to all the foregoing motions, and it appearing to the Court that plaintiff American Urban People's Economic Development Corporation is represented only by plaintiff, Eddie Thompson, Jr., pro se, who is apparently not an attorney, and it further appearing to the Court that the law in this circuit is "that a corporation cannot appear otherwise than through an attorney." *United States v. 9.19 Acres of Land*, 416 F.2d 1244, 1245 (6th Cir. 1969); 28 U.S.C. § 1654, and the Court being advised, it is

**ORDERED AS FOLLOWS:**

1. That defendant Gover be granted twenty (20) days from the date of this order within which to serve and file a memorandum in support of his motion to dismiss.
2. That plaintiffs, and all other parties, be granted twenty (20) days thereafter within which to serve and file a responsive memoranda to defendant Gover's motion.
3. That plaintiffs, and all other parties, be granted forty (40) days from the date of this order within which to serve and file a responsive memorandum to the motion to dismiss of defendant Merv Grayson, Jr.
4. That plaintiff's tendered amended complaint be filed FED.R. CIV.P. 15 (a).
5. That plaintiff American Urban People's Economic Development Corporation be granted twenty (20) days from the date of this order within which to enter the appearance of an attorney to represent it or suffer the complaint to be dismissed as to it.
6. At the expiration of forty (40) days from the date of this order, the Clerk is directed to forward the record in this case to the undersigned Judge for his consideration.

This 2 day of September, 1977.

/s/ EUGENE E. SILER, JR.,  
JUDGE



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
COVINGTON

NO. 77-73

EDDIE THOMPSON, JR.,  
PLAINTIFF,

vs.

AMERICAN URBAN PEOPLES ECONOMIC  
DEVELOPMENT CORPORATION,  
PEOPLE'S LIBERTY BANK,  
MERV GRAYSON, JR.,  
MERV GRAYSON, SR.,  
RICHARD S. NELSON,  
GEORGE GOVER  
DEFENDANTS.

AMENDED COMPLAINT

(Tendered September 23, 1977)

Plaintiff Eddie Thompson, Jr. states:

1. That jurisdiction of this court in this matter arises under 28 U.S.C. 1343; 42 U.S.C. 1983, 1985, 1986.
2. That Eddie Thompson, Jr. is black, is a citizen of the State of Kentucky, and was a candidate for City Commissioner in the May 1975 primary.
3. That the May 1975 Primary Election was fixed and Eddie Thompson, Jr. contested it.
4. That Mer Grayson, Jr. Mer Grayson, Sr., Richard Nelson, and George Gover knew Eddie Thompson, Jr.

would be a candidate in the May 1977 Primary Election and sought to prevent him from being a candidate because of his race.

5. That in the Covington Model Cities Program (1970), a small neighborhood Kentucky corporation (American Urban Peoples Economic Development Corporation (AUPED), a group of blacks) was formed to stimulate economic growth among minorities and other underprivileged persons in the City of Covington.
6. That AUPED had approximately 2200 shares of capital stock outstanding.
7. That Eddie Thompson, Jr., a black, is owner and holder of 1101 shares of AUPED's stock and brings this action representatively and derivatively on behalf of all stockholders similarly situated, who may join herein and contribute to the expense thereof.
8. That Mr. Grayson, Jr. is and/or was a vice-president of People's Liberty Bank, now believed to be a vice-president of Covington Trust Bank.
9. That Mr. Grayson, Sr. is and/or was Chairman of the Board of People's Liberty Bank and agent of the Bank, and with whom Eddie Thompson, Jr. negotiated the loan on the above property and equipment.
10. That Mr. Richard S. Nelson is and/or was an attorney for People's Liberty Bank and was counsel for defendants in the contesting of the May 1975 Primary Election.
11. That Mr. Nelson allegedly was not paid for his services in the election suit.
12. That Mr. George Gover is stockholder and/or was a Board member of AUPED.

13. That defendant American Urban Peoples Economic Corporation is located at 1001 Greenup Street, and the property is further described as follows:

Beginning at the southwest corner or intersection of Greenup and 10th Street; thence running southwardly along the west line of Greenup Street 50 feet; thence westwardly at right angles 75 feet; thence northwardly on a line parallel with Greenup Street 50 feet to the south line of 10th Street; thence eastwardly along the south line of 10th Street 75 feet to the place of beginning.

14. That in 1970 People's Liberty Bank fostered the AUPED project, and Mr. Grayson, Sr. had offered to serve on the Board and had provided an attorney for the corporation.
15. That as a result of Eddie Thompson, Jr. contesting the May 1975 Primary Election and being a potential candidate for City Commisisoner in the May 1977 Primary Election, Mr. Nelson, Mr. Mer Grayson, Jr., Mr. George Gover, and unnamed person/s conspired to defraud AUPED and its stockholders of its real property, business income, because they were black.
16. That on August 27, 1976, Mr. Grayson, Jr. and/or Mr. Grayson, Sr. had Mr. Nelson to file a maliciously intended suit involving one (1) piece of property in which AUPED had an interest to deprive the stockholders of their property, without due process, because they were black.
17. That this action wrongfully caused proceeding to issue against plaintiff in case No. 31054, Styled People's Liberty Bank v American Urban People's Economic Development Corporation.
18. That Patricia and Eddie Thompson, Jr. operated the business at 1001 Greenup Street, owned by AUPED.

19. That on September 13, 1974, Eddie Thompson, Jr. had negotiated a \$21,000 loan with Mr. Grayson, Sr. to rehab a building at 1013-Greenup Street so as to relocate the business at 1001 Greenup Street to 1013-15 Greenup Street.
20. That by oral agreement, Mr. Grayson, Sr. had promised to increase the amount of the loan by \$20,000.
21. That Patricia and Eddie Thompson, Jr. had closed the business at 1001 Greenup Street in anticipation of moving the business to 1013-15 Greenup Street.
22. That sometime in April or May 1975, Mr. Grayson, Sr. became ill and Mr. Grayson, Jr. acted in his stead and kept assuring Eddie Thompson, Jr. that he would have no problems in getting the additional \$20,000 loan.
23. That because it took so long for People's Liberty Bank to release the money to remodel 1013-15 Greenup Street, Eddie Thompson, Jr. leased 1001 Greenup Street to Mr. Victor Bernard for \$200 a month on May 15, 1976. (Exhibit A).
24. That Mr. Gover informed Mr. Bernard that he was a stockholder in the Corporation and wanted to know if Mr. Bernard had purchased the property at 1001 Greenup Street.
25. That in 1975, People's Liberty Bank informed AUPED that the mortgage needed to be re-written or that the monthly payments needed to be increased.
26. That People's Liberty Bank and Mr. Grayson, Sr. were informed that Eddie Thompson, Jr. was empowered to renegotiate any and all business for AUPED.
27. That officials of People's Liberty Bank, including Mr. Grayson, Sr., stated that the Bank would do no business with Eddie Thompson, Jr. (no reason given.)

28. That Mr. Grayson, Sr. offered to make suitable arrangements at People's Liberty Bank or otherwise for at least 2 unnamed persons to purchase the corporate property at 1001 Greenup Street.
29. That Mr. Gover was aware of the offer and of the conspiracy against AUPED and Eddie Thompson, Jr.
30. That when suits appeared in the newspaper as public information, Mr. Gover took this information to Mr. Bernard and told him that he had better leave before he tied up any more money in his business.
31. That Mr. Bernard related this to Eddie Thompson, Jr. and Thompson informed Mr. Bernard that as long as People's Liberty was receiving the rent there was nothing legally that People's Liberty Bank could do.
32. That Mr. Bernard related the above to Mr. Gover who related it to Mr. Grayson, Sr. and/or Mr. Grayson, Jr.
33. That the rent for September 1976 was deposited and paid to People's Liberty Bank.
34. That Mr. Grayson, Sr., and/or Mr. Grayson, Jr. claimed the check bounced but did not return the check.
35. That Mr. Grayson, Sr. and/or Mr. Grayson, Jr. promised Mr. Gover they would make suitable arrangements so that he could purchase the corporate property if he could get Mr. Bernard to leave.
36. That Mr. Gover did convince Mr. Bernard to leave and to give him the keys to the business and real property.
37. That on the 19th day of April, 1977, Mr. George Gover unlawfully entered in the above mentioned real estate and without right or authority of law.

38. That when Eddie Thompson, Jr. asked Mr. Gover to leave, Mr. Gover claimed that Mr. Grayson, Sr. told him to take possession of the property, and if he encountered any problems, Mr. Grayson, Sr. would take care of them at City Hall.
39. That Mr. Grayson, Jr. had served on the AUPED Board of Directors.
40. That Mr. Grayson, Jr. had sowed deceit and disharmony among AUPED's Board members and stockholders causing some to resign, including Mr. George Gover.
41. That People's Liberty Bank is currently carrying out some of the programs initially intended to be carried out by AUPED.
42. That Mr. Grayson, Jr., Mr. Grayson, Sr., Mr. Nelson, and Mr. Gover wilfully used the prestige and influence of People's Liberty Bank to cause AUPED its adversities.
43. That Mr. Grayson, Jr.'s effects were intended and planned to cause AUPED severe loss.
44. That AUPED had invested about \$40,000 into their project at 1001 Greenup Street.
45. That all of the defendants wilfully sought to destroy any potential economic development in the Model Neighborhood and the City of Covington, by AUPED, because its members were black.
46. That Mr. Nelson, Mr. Grayson, Jr., and Mr. Grayson, Sr. brought their actions to intimidate the stockholders of AUPED.
47. The Corporation presently has no Board of Directors.
48. Any effort to get the stockholders to bring a suit would be futile, as they had relied upon Mr. Grayson, Sr. to provide counsel.

49. The corporation is without funds to maintain a suit.
50. That Eddie Thompson, Jr. will fairly and adequately represent the interests of all stockholders.
51. That Eddie Thompson, Jr. will enforce the rights of the corporation to the best of his ability.

WHEREFORE plaintiff prays the court for judgment against defendants jointly and/or severally as follows:

1. That by reason of the unlawful conspiracy and by reason of the unlawful, wilful, and wanton acts and conduct on the part of People's Liberty Bank, Mr. Nelson, Mr. Grayson, Jr., Mr. Grayson, Sr., and Mr. Gover in effort to carry out such fraudulent conspiracy, Defendant American Urban Peoples Economic Development Corporation is entitled to recover its property and deed plus \$300,000 declaratory damage.
2. Rent from Mr. Gover from September 1, 1976 @ \$200 a month.
3. Punitive damages of \$100,000.
4. For any other good and proper relief to which it is entitled.

/s/ EDDIE THOMPSON, JR. Pro Se  
736 Highland Avenue  
Covington, Kentucky 41011  
606/491-6278

#### CERTIFICATION

I hereby certify that that a copy for the foregoing Amended Complaint has been served by the United States mail, upon all attorneys of record this 23 day of September, 1977.

/s/ EDDIE THOMPSON, JR.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
COVINGTON

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CIVIL ACTION NO. 77-73

---

AMERICAN URBAN PEOPLE'S ECONOMIC  
DEVELOPMENT CORP., ET AL.,

Plaintiffs,

vs.

PEOPLES LIBERTY BANK, ET AL.,

Defendants.

---

#### ORDER

(Filed September 23, 1977)

Defendant, Merv Grayson, Jr., having filed a motion for a protective order and said motion having been referred to the undersigned United States Magistrate for ruling thereon and being advised,

IT IS ORDERED that the above-styled action be, and it hereby is, assigned for hearing on said motion at Covington on October 11, 1977 at the hour of 1:30 P.M.

This the 23d day of September, 1977.

/s/ JOSEPH M. HOOD  
United States Magistrate



12a

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
COVINGTON

---

CIVIL ACTION NO. 77-73

---

AMERICAN URBAN PEOPLE'S ECONOMIC  
DEVELOPMENT CORP., ET AL.,  
Plaintiffs,

vs.

PEOPLES LIBERTY BANK, ET AL.,  
Defendants.

---

(Filed October 17, 1977)

Defendants Merv Grayson, Jr. and Richard S. Nelson having moved the Court for a protective order relieving each of them from the obligation of answering plaintiffs' interrogatories until such time as this Court shall rule upon pending motions to dismiss and said motions having been argued on October 11, 1977 and being advised,

IT IS ORDERED that said motions be, and they hereby are, OVERRULED. A protective order should not issue if it could result in denying a party access to facts necessary to withstand the motions to dismiss. Cf. *NAACP, Western Region v. Hodgson*, 57 F.R.D. 81, 83 (D.D.C. 1972).

This the 17th day of October, 1977.

/s/ JOSEPH M. HOOD  
United States Magistrate

13a

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
COVINGTON

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CIVIL ACTION NO. 77-73

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AMERICAN URBAN PEOPLE'S ECONOMIC  
DEVELOPMENT CORPORATION, ET AL.,  
Plaintiffs,

vs.

PEOPLES LIBERTY BANK, ET AL.,  
Defendants.

---

ORDER

(Filed November 17, 1977)

Peoples Liberty Bank and Trust Co., Merv Grayson, Sr., and Richard Nelson having, on September 2, 1977, filed a motion to strike and amended pleading filed by plaintiff on August 29, 1977, and plaintiff, Eddie Thompson, Jr., having, on September 23, 1977, filed a motion to amend his complaint to realign American Urban Peoples Economic Development Corporation as a defendant, and defendant Merv Grayson, Jr., having, on September 26, 1977, filed a motion for an enlargement of time within which to file his answer, and plaintiff Eddie Thompson, Jr., having, on October 31, 1977, filed two motions to compel answers to interrogatories, and the Court being advised as to each of the aforesaid motions, it is

ORDERED AS FOLLOWS:

1. That the September 2, 1977, motion of Peoples Liberty Bank and Trust Co., Merv Grayson, Sr., and Rich-

ard Nelson, to strike plaintiff's amended pleading be overruled. *Fuhrer v. Fuhrer*, 292 F.2d 140, 142 (7th Cir. 1961).

2. That plaintiff Thompson's motion to realign American Urban Peoples Economic Development Corporation as a defendant be overruled.

3. The motion of defendant Merv Grayson, Jr., for an enlargement of time be overruled. FED.R.CIV.P. 12 (a).

4. Plaintiff Thompson's motions to compel discovery, filed on October 31, 1977, be, and they hereby are, assigned to the Honorable Joseph M. Hood, United States Magistrate, for a ruling thereon.

5. Plaintiff American Urban People's Economic Development Corporation having failed to enter its appearance by counsel, as directed by the Court's order filed September 2, 1977, it is

ORDERED that said plaintiff be, and it hereby is, dismissed as a party to this action. *United States v. 9.19 Acres of Land*, 416 F.2d 1244, 1245 (6th Cir. 1969).

This 17 day of November, 1977.

/s/ EUGENE E. SILER, JR.  
Judge

(DULY CERTIFIED)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
COVINGTON

CIVIL ACTION NO. 77-73

AMERICAN URBAN PEOPLE'S ECONOMIC  
DEVELOPMENT CORPORATION, ET AL.,  
Plaintiffs,

vs.

PEOPLES LIBERTY BANK, ET AL.,  
Defendants.

ORDER

(Filed November 23, 1977)

Plaintiff Eddie Thompson, Jr. having moved the Court for an order compelling defendant Merv. Grayson, Jr. to answer interrogatories served upon him on August 29, 1977 and noting that said defendant's answers to those interrogatories have been filed herein,

IT IS ORDERED that plaintiff's motion to compel be, and it hereby is, OVERRULED as moot.

Plaintiff Eddie Thompson, Jr. having moved the Court for an order awarding him the sum of \$100.00 for his costs in soliciting an order to compel and being advised,

IT IS FURTHER ORDERED that plaintiff's motion for an order awarding him the sum of \$100.00 for his costs be, and it hereby is, OVERRULED. Said interrogatories were answered timely and, therefore, award of costs is not warranted.

This the 23d day of November, 1977.

/s/ JOSEPH M. HOOD  
United States Magistrate

16a

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
COVINGTON

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CIVIL ACTION NO. 77-73

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EDDIE THOMPSON, JR.,

Plaintiff,

vs.

PEOPLES LIBERTY BANK, ET AL.,

Defendants.

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**ORDER**

(Filed January 31, 1978)

In accordance with the memorandum of even date, it is hereby

**ORDERED AS FOLLOWS:**

1. The motion by the plaintiff for the undersigned Judge to disqualify himself from this case be and is overruled.

2. The motion made on November 25, 1977, for the Court to amend its Order and/or to certify a question of law to permit appeal on the dismissal of the American Urban Peoples Economic Development Corporation be and is overruled.

This 31 day of January, 1978.

/s/ EUGENE E. SILER, JR.  
Judge

17a

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
COVINGTON

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CIVIL ACTION NO. 77-73

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EDDIE THOMPSON, JR.,

Plaintiff,

vs.

PEOPLES LIBERTY BANK, ET AL.,

Defendants.

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**MEMORANDUM**

(Filed January 31, 1978)

Plaintiff has filed an affidavit to disqualify the undersigned as judge. No motion accompanied it, but the Court will deem it a motion pursuant to 28 U.S.C. § 455.

It is true that in Covington Civil Action No. 1752, *Eddie Thompson, Jr., et al. v. City of Covington, et al.*, the undersigned while U.S. Attorney represented two HUD officials, Roger Carlton and Hobart Wooten, who had been sued, along with many Covington city officials, by the present plaintiff, and that the late Judge Swinford dismissed the case as to the two named HUD officials. The reason for dismissal was because of a lack of jurisdiction, not a dismissal on the merits.

The affidavit is erroneous in that it expresses that the undersigned has now or ever had a personal bias and prejudice toward the plaintiff in this case or any other case. Moreover, Civil Action No. 1752 had no relationship to the present case except that the two cases have a common

plaintiff, that is, Eddie Thompson, Jr. Therefore, the alleged disqualification does not come under 28 U.S.C. § 455 (b).

Pursuant to 28 U.S.C. § 455 (a), the judge "shall disqualify himself in any proceeding in which his impartiality might *reasonably* be questioned." (Emphasis added.) The undersigned's impartiality has been questioned, but not *reasonably*. It was not until the Court had made several rulings in this case and another that the plaintiff here asserted that the undersigned should disqualify himself. The Court believes that if the plaintiff in good faith was alleging this prejudice, he would have brought this up initially in this case. Therefore, by a separate Order, the motion will be overruled.

The plaintiff has also moved the Court to amend its Order and/or to certify a question of law to permit an appeal, pursuant to 28 U.S.C. § 1292 (b). However, the Court feels that its previous ruling was not erroneous and that the ruling was not such as to warrant a certification pursuant to that statute, so the motion will be overruled.

This 31 day of January, 1978.

/s/ EUGENE E. SILER, JR.  
Judge

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
COVINGTON

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CIVIL ACTION NO. 77-73

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EDDIE THOMPSON, JR.,

Plaintiff,

vs.

PEOPLES LIBERTY BANK AND TRUST  
COMPANY, ET AL,

Defendants.

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**ORDER**

(Filed February 15, 1978)

Plaintiff having moved the Court for an order compelling defendant Merv Grayson, Jr. to answer fully several of a series of interrogatories served upon him on or about August 29, 1977, and being advised,

IT IS ORDERED that defendant Grayson prepare, serve and file a response to said motion within ten days of the date of this Order.

This the 15th day of February, 1978.

/s/ JOSEPH M. HOOD  
United States Magistrate



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
COVINGTON

CIVIL ACTION NO. 77-73

EDDIE THOMPSON, JR.,

Plaintiff,

vs.

PEOPLES LIBERTY BANK AND TRUST  
COMPANY, ET AL,

Defendants.

MEMORANDUM OPINION AND ORDER

(Filed February 15, 1978)

Plaintiff has moved the Court for an order compelling defendant Richard S. Nelson to answer fully two of a series of interrogatories served upon him on August 29, 1977. The motion was referred to the undersigned United States Magistrate for consideration and ruling thereon. 28 U.S.C. § 636 (b) (1) (A).

Interrogatory No. 9 refers to two foreclosure actions filed in the Kenton Circuit Court, Kenton County, Kentucky. In one of those actions, the mortgagees were plaintiff and his spouse. In the other, the mortgagee was American Urban Peoples Economic Development Corporation (AUPED) and service was had upon plaintiff as the process agent for the corporation. In each case Nelson served as counsel for the mortgagor and defendant herein Peoples Liberty Bank and Trust Company. Interrogatory No. 9 seeks to ascertain the amount of fees collected by Nelson in the two cases. The question is whether the information sought is relevant or is likely to lead to relevant

evidence. Rule 26, F.R.C.P. To make that determination, it is necessary to briefly address the *pro se* complaint as amended.

Thompson contends that the two foreclosure actions were brought as a part of a conspiracy to punish and defraud him and other stockholders of AUPED because he chose to contest the results of a 1975 municipal election and because of his race. Although it cannot be said that the information sought is relevant at the present time, there remains the possibility that it might lead to relevant evidence of overt acts in furtherance of the alleged conspiracy. Nelson shall answer Interrogatory No. 9.

Interrogatory No. 14 deals with the Thompson's Kenton Circuit Court suit contesting the election results. Nelson represented one James Simpson, a defendant in that action, but not in this cause. Thompson desires information as to the amount of the fee collected by Nelson for representing Simpson. On the present state of the pleadings, I do not believe that the information sought is relevant or will lead to relevant evidence. Nelson need not submit a further answer to Interrogatory No. 14.

Accordingly,

IT IS ORDERED herein as follows:

(1) That plaintiff's motion to compel Nelson to answer Interrogatory No. 9 be, and the same hereby is, **SUSTAINED**. Nelson shall answer Interrogatory No. 9 within twenty days of the date of this Memorandum Opinion and Order.

(2) That plaintiff's motion to compel Nelson to answer Interrogatory No. 14 be, and it hereby is, **OVERRULED**.

(3) That each party bear his own costs in conjunction with this motion to compel.

This the 15th day of February, 1978.

/s/ JOSEPH M. HOOD  
United States Magistrate

22a

**LETTER**

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(Under Letterhead of United States Court of Appeals)  
(Filed October 10, 1978)

August 8, 1978

Mr. Richard S. Nelson  
Mr. Gerlad Benzinger  
Mr. John Elfers  
Mr. Charles Wagner

Re: Our No. 78-3169  
Eddie Thompson, Jr., plaintiff-appellant,  
vs. Peoples Liberty Bank, et al., defendants-  
appellees.  
District Court No. C 77-73

Gentlemen:

Rule 31 of the Federal Rules of Appellate Procedure provides that ". . . [t]he appellee shall serve and file his brief within thirty (30) days after service of the brief of the appellant." Our records indicate that the appellant's brief was served on May 22, 1978, yet as of today, we have not received the brief on behalf of the appellee.

The Court requires that an appellee's brief be filed in this matter. A motion to allow the late filing of a brief must be approved by the Court prior to the filing of a brief tendered outside the time period contemplated by the Rules.

Your attention is also invited to Rule 31 (c), Federal Rules of Appellate Procedure.

23a

We will expect your response within ten (10) calendar days from the date of this letter.

Yours very truly,

John P. Hehman, Clerk

/s/ CAROLYN F. HOFSTETTER  
Deputy Clerk

xc: Mr. Eddie Thompson, Jr.

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78-3169

**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

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**EDDIE THOMPSON, JR.,**  
Plaintiff-Appellant,  
vs.  
**PEOPLES LIBERTY BANK, ET AL.,**  
Defendants-Appellees.

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**ORDER**

(Filed October 10, 1978)

Before: ENGEL, KEITH and MERRITT, Circuit Judges.

This matter is before the Court upon consideration of appellees' motion to dismiss for lack of jurisdiction.

It appears that the order entered on November 17, 1977 dismissed only one plaintiff's claims against the defendants

and that there was neither an express determination under Rule 54 (b) , Federal Rules of Civil Procedure, nor a certification under 28 U.S.C. § 1292 (b) , and therefore not a final order from which an appeal could be perfected, *Moody v. Kapica*, 548 F.2d 133 (6th Cir. 1976) .

It appears that plaintiff's notice of appeal was from the January 31, 1978 order wherein 1) the District Judge refused to disqualify himself which is a nonappealable order, *In Re Virginia Electric & Power Co.*, 539 F.2d 357 (4th Cir. 1976); *Kelley Metropolitan County Board of Nashville*, 479 F.2d 810 (6th Cir. 1973); *Collier v. Picard*, 237 F.2d 234 (6th Cir. 1956); *Albert v. District Court*, 283 F.2d 61 (6th Cir. 1960); *Scarrella v. Midwest Federal Savings and Loan*, 536 F.2d 1207 (8th Cir. 1976), cert. den., 429 U.S. 885, and 2) the District Court refused to amend its November 17, 1977 order, which was non-appealable, and refused to certify the question of law pursuant to 28 U.S.C. § 1292 (b) which also is a non-appealable order, *Re Master Key Antitrust Litigation*, 528 F.2d 5 (2nd Cir. 1975); *Fluor Ocean Services, Inc. v. Hampton*, 502 F.3d 1169 (5th Cir. 1974) .

Accordingly, the Court concludes that the appeal has been perfected from interlocutory orders and not final orders as required by 28 U.S.C. § 1291 and the Court to be without jurisdiction. Therefore, it is ORDERED that appellees' motion to dismiss be and hereby is granted and the appeal dismissed. Rule 9 (b) (1) , Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE  
COURT

/s/ JOHN P. HEHMAN  
Clerk

(DULY CERTIFIED)

78-3169

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

EDDIE THOMPSON, JR.,  
Plaintiff-Appellant,

vs.

PEOPLES LIBERTY BANK, ET AL.,  
Defendants-Appellees.

ORDER

(Filed November 14, 1978)

Before: ENGEL, KEITH and MERRITT, Circuit Judges.

Plaintiff-appellant's petition for rehearing having come on to be considered and of the judges of this Court who are in regular active service less than a majority having favored ordering consideration en banc, the petition has been referred to the panel which considered appellees' motion to dismiss, and it further appearing that the petition for rehearing is without merit,

IT IS ORDERED that the petition be, and it hereby is denied.

ENTERED BY ORDER OF THE  
COURT

/s/ JOHN P. HEHMAN  
Clerk

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
COVINGTON  
CIVIL 77-73

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EDDIE THOMPSON, JR.,  
PLAINTIFF,

vs.

PEOPLES LIBERTY BANK, et al.,  
DEFENDANTS.

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**ORDER**

(Filed December 8, 1978)

It appearing that the Clerk has received from the United States Court of Appeals for the Sixth Circuit a Mandate dated November 28, 1978, affirming the Judgment of this Court in the above-styled case and no costs being assessed, and it further appearing that on February 27, 1978 EDDIE THOMPSON, JR. deposited in the Registry of this Court \$250.00 representing the bond for costs on appeal,

IT IS ORDERED that the Clerk issue a check in the sum of \$250.00 on the Registry of this Court payable to EDDIE THOMPSON, JR., 736 Highland Avenue, Covington, Kentucky.

December 8, 1978

/s/ EUGENE E. SILER, JR., JUDGE

I certify that the above funds are on deposit in the Registry of this Court.

DAVIS T. McGARVEY, CLERK

BY: /s/ OPAL J. DeROSSETTE, Deputy Clerk

December 7th, 1978